

October 4, 2024

The Hon. Judge Victoria Reznik
U.S. District Court for the Southern District of New York

**Re: *Xinuos, Inc. v. IBM Corp. et. al.*, Case No. 7:22-cv-09777-CS-VR (S.D.N.Y.) –
Joint Letter Concerning the Parties’ Efforts to Meet and Confer Regarding
Custodian and Source Code Issues**

To the Honorable Judge Reznik:

Pursuant to Your Honor’s Order entered on October 1, 2024, Plaintiff Xinuos, Inc. (“Xinuos”) and Defendants International Business Machines Corp. (“IBM”) and Red Hat, Inc. (“Red Hat”) (collectively, “Defendants”) jointly submit this letter to update the Court about the parties’ continued efforts to meet and confer regarding (1) the negotiation of additional custodians who may have documents relevant to Xinuos’ document requests, and (2) Xinuos’ source code review proposal made at the September 17, 2024 status conference.

As for the custodian issue, the parties further met and conferred regarding the availability of documents from potentially relevant Red Hat custodians identified by Xinuos. Defendants’ investigation has not identified any custodial documents before 2014 for the proposed Red Hat custodians. Based upon Defendants’ representation and without waiver of Xinuos’ right to seek documents from other Red Hat custodians Xinuos may identify through further discovery or of Defendants’ right to object to the addition of further Red Hat custodians at a future date, Xinuos has agreed to narrow its proposed custodian list to identify an additional 5-10 IBM custodians. Therefore, the parties’ meet-and-confer efforts on this issue is concluded.

As for Xinuos’ proposal for the review of Defendants’ source code, the parties have reached an impasse. The parties disagree regarding the relevance of the source code to Xinuos’ allegations and the burden of producing the source code requested by Xinuos. Because this dispute hinges on the same issue that the Court had requested that the parties brief, in the interest of judicial and party efficiency, the parties ask the Court to permit the parties to consolidate this dispute into that briefing process.

Thus, the parties respectfully request that the Court issue an order as follows: (1) Xinuos will file its brief concerning the relevance of Defendants’ source code to its antitrust claims by no later than Wednesday, October 9; and (2) Defendants will file its response brief by no later than Wednesday, October 16.



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The parties' request is **GRANTED**.

Plaintiff will file its brief by no later than 10/09/2024, and Defendants will file their opposition by no later than 10/16/2024.

SO ORDERED.

Hon. Victoria Reznik, U.S.M.J.

Dated: 10/07/2024